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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

ANDREW MAROWITZ,

Plaintiff and Appellant,

v.

COUNTY OF MARIPOSA et al.,

Defendants and Respondents.

F077614

(Super. Ct. No. 10820)

OPINION

APPEAL from a judgment of the Superior Court of Mariposa County. Michael A. Fagalde, Judge.

Andrew Marowitz, in pro. per., for Plaintiff and Appellant.

Wanger Jones Helsley, Oliver W. Wanger, Steven M. Crass and Nicolas R. Cardella for Defendants and Respondents.

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Plaintiff Andrew Marowitz claims that county government employees, while investigating compliance with land use ordinances, entered onto his land in Mariposa County without permission and took photographs of certain areas to substantiate his purported noncompliance with open storage regulations. Plaintiff filed a lawsuit alleging that because these actions were undertaken without a warrant, his constitutional right to

be free from unreasonable searches and seizures was violated. In his lawsuit, plaintiff sought the recovery of damages under various legal theories against defendants County of Mariposa, the Mariposa County Planning Department, the Mariposa County Building Department, and several employees of the County of Mariposa including Sarah Williams, Michael Kinslow, Debra Willis, Brian Hodge, Mac Myovich and Josh Soares (collectively the county defendants). The county defendants demurred to the lawsuit on multiple grounds, including that plaintiff's reasonable expectation of privacy was not violated because the only areas inspected were open fields, and thus the searches were not unreasonable under the Fourth Amendment and did not violate plaintiff's rights. The county defendants also asserted in their demurrer that certain statutory immunities applied. The trial court agreed with the county defendants and sustained their demurrer without leave to amend, while permitting plaintiff to substitute a different party defendant (i.e., the State of California) as to one cause of action. Plaintiff appeals from the resulting judgment of dismissal. We conclude the trial court correctly sustained the demurrer without leave to amend, and accordingly the judgment of the trial court in favor of the county defendants is affirmed.

FACTS AND PROCEDURAL HISTORY

For purposes of the instant appeal, plaintiff's operative pleading is the second amended complaint, filed on January 4, 2018. According to the second amended complaint, the County of Mariposa's "Code Enforcement Department" operated by the Mariposa County Planning Department employed persons on staff who served as code enforcement officers or inspectors (the county inspectors). Allegedly, the county inspectors would from time to time enter plaintiff's land and take photographs of portions thereof, all without plaintiff's consent and without a warrant, which inspections and photographs allegedly were used to ascertain plaintiff's level of compliance, or his progress toward attaining more adequate compliance, with open storage regulations. To avoid fees or penalties for noncompliance, a few times each year plaintiff would travel

from the Oakland area to visit his property in Mariposa County where he would work many hours attempting to make progress toward clearing the land of cast-off items or “junk” left there. This same pattern continued from year to year between 2005 and 2016. Allegedly, the recurring actions by the county inspectors of periodically entering plaintiff’s land and taking photographs constituted invasions of plaintiff’s reasonable expectation of privacy and violated his constitutional right to be free from unreasonable searches.

Plaintiff’s second amended complaint provides a basic description of the Mariposa County property in question, which was allegedly inherited from his brother in 2003. The property is approximately 17 acres in size and includes “a house, a cottage, a garage and a barn.” According to plaintiff, the property is in a remote area of the mountains, largely hidden from public view, and only a few neighbors ever use the private access road. Although plaintiff does not reside at the Mariposa County property but instead lives and works in the Bay Area, his intention has been to use the Mariposa County property as a potential vacation home or as a retirement property. However, because of all the strenuous work he has had to do there over the years to meet code compliance mandates, the property has allegedly been only a burden to plaintiff.

Based on these and other allegations, the second amended complaint attempts to state a number of causes of action, including claims for violation of civil rights under section 1983 of title 42 of the United States Code, intentional infliction of emotional distress, and also a declaratory relief claim seeking to have Government Code section 65105 declared unconstitutional because it allows planning agency staff to enter upon any land to examine or survey the land. As set forth in the prayer for relief, plaintiff’s second amended complaint seeks the recovery of at least \$20 million in compensatory and punitive damages from the county defendants.

On February 5, 2018, the county defendants filed their general demurrer to plaintiff’s second amended complaint. In their demurrer, the county defendants argued

that plaintiff's allegations were insufficient to state any cause of action against them for a number of reasons, including that their alleged conduct did not constitute a violation of plaintiff's right under the United States Constitution to be free of unreasonable searches or seizures. Among other things, the county defendants pointed out that no privacy rights were violated because plaintiff was an absentee owner and the inspections only involved areas that were open fields. Moreover, even assuming for the sake of argument that potential liability may conceivably exist under the second amended complaint, the county defendants further asserted that statutory or governmental immunities would clearly apply and defeat plaintiff's claims.

The hearing on the demurrer was held on March 12, 2018. After the parties concluded their oral argument, the trial court expressed its ruling from the bench, which was to sustain the county defendants' demurrer without leave to amend, except that as to the 11th cause of action (seeking to declare a statute unconstitutional) the trial court would allow plaintiff to substitute a new party (i.e., the State of California) in place of the county defendants. The trial court explained from the bench the crux of its ruling in the following words: "I find that the Plaintiff had no legitimate expectation of privacy in the areas of his property that was searched by the County pursuant to the open fields doctrine.... Defendants also argue that they're allowed to inspect for zoning violations and for nuisance abatement. And I find that the open fields doctrine is applicable as to all of the facts that were alleged by the Plaintiff as to what the County did, since there are no allegations that they went into any residence or any outbuildings. They took pictures and made inspections of open fields—things in an open field. So I find that doctrine does apply." At the close of hearing, the trial court indicated that a written order would be forthcoming.

On March 14, 2018, the trial court filed its written order sustaining the county defendants' demurrer to the second amended complaint. Leave to amend was denied, except that plaintiff was permitted to substitute a new defendant (i.e., the State of

California) to pursue his declaratory relief cause of action. A dismissal with prejudice was entered in favor of the county defendants on March 22, 2018. Plaintiff's appeal followed.¹

DISCUSSION

I. Standard of Review

On appeal from a judgment dismissing an action after sustaining a demurrer, we review de novo whether the complaint states facts sufficient to constitute a cause of action under any legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) “We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law.” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) We also consider matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken.’ ” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. (*Ibid.*) And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. (*Ibid.*) “The burden of proving such

¹ We note that plaintiff filed a parallel lawsuit in federal court. We grant the county defendants' request for judicial notice, which includes plaintiff's filing in the United States District Court, Eastern District of California, of an amended complaint seeking, inter alia, damages under section 1983 of title 42 of the United States Code against several of the county defendants based on the same essential allegations. In November 2018, the District Court ordered the proceedings in the federal court action stayed pending the outcome and finality of this appeal of the present state court action.

reasonable possibility is squarely on the plaintiff.” (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

In addressing the issues before us, we shall organize our discussion by considering plaintiff’s federal law claims first and his state law claims second.

II. The Trial Court Did Not Err in Sustaining Demurrer to Federal Law Claims

A. No Cause of Action under Section 1983 of Title 42 of the United States Code

Plaintiff’s primary federal law claims are under section 1983 of title 42 of the United States Code (hereafter section 1983), premised upon alleged violations of plaintiff’s right under the Fourth Amendment of the United States Constitution to be free from unreasonable searches and seizures. The section 1983 claims are set forth by plaintiff in the first and second causes of action of the second amended complaint. To set the stage for our analysis of these claims, we begin with a brief overview of section 1983.

Section 1983 provides a cause of action as a remedy for the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States. (§ 1983; *Gomez v. Toledo* (1980) 446 U.S. 635, 638.)² “To state a claim under section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” (*West v. Atkins* (1988) 487 U.S. 42, 48.) State courts look to federal law to determine what conduct will support an action under section 1983. (*Arce v. Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1472.) Because liability requires showing “a violation of the underlying constitutional right” (*Daniels v. Williams* (1986) 474 U.S. 327, 330), a threshold inquiry in analyzing a

² Section 1983 provides in part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”

section 1983 claim is often—as here—whether the plaintiff has presented an adequate factual basis to establish a deprivation of the particular constitutional right at issue. (See *Arce v. Childrens Hospital Los Angeles*, *supra*, 211 Cal.App.4th at pp. 1472–1473.)

In reviewing the sufficiency of a section 1983 cause of action on general demurrer, California courts apply federal law. (*Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 563–564.) “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” (*Ashcroft v. Iqbal* (2009) 556 U.S. 662, 678.) Rather, “[s]ome particularized facts demonstrating a constitutional deprivation” are required. (*Bach v. County of Butte*, *supra*, 147 Cal.App.3d at p. 564; accord, *Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 891.) Generally, a section 1983 complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” (*Ashcroft v. Iqbal*, *supra*, 556 U.S. at p. 678.) In other words, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (*Ibid.*) At the same time, in accordance with federal law we construe section 1983 allegations liberally, particularly where the plaintiff is self-represented. (*Litmon v. Harris* (9th Cir. 2014) 768 F.3d 1237, 1241; *Erickson v. Pardus* (2007) 551 U.S. 89, 94; *Hughes v. Rowe* (1980) 449 U.S. 5, 9–10 [dismissal of pro se complaint for failure to state a claim is only granted if it appears “beyond doubt” that the plaintiff is not entitled to relief]; *Arce v. Childrens Hospital Los Angeles*, *supra*, 211 Cal.App.4th at p. 1471.) However, a liberal interpretation of a pro se civil rights complaint does not operate to supply essential elements of the cause of action or prevent dismissal where such elements are lacking. (*Litmon v. Harris*, *supra*, 768 F.3d at p. 1241.)

Having provided the preliminary legal framework, we now consider the sufficiency of plaintiff’s allegations under section 1983. Plaintiff was required to plead an adequate factual basis to support his contention that the county defendants violated his Fourth Amendment protection against unreasonable searches and seizures. Plaintiff

failed to do so. As the trial court held, the application of the open field doctrine in this case clearly establishes that the county defendants' actions as described in the second amended complaint did not violate plaintiff's Fourth Amendment rights. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are *unreasonable*." (*Florida v. Jimeno* (1991) 500 U.S. 248, 250, italics added.) However, it has long been recognized that "the government's intrusion upon the open fields is not one of those 'unreasonable searches' proscribed by the text of the Fourth Amendment." (*Oliver v. United States* (1984) 466 U.S. 170, 177, foll. *Hester v. United States* (1924) 265 U.S. 57.) As was stated in *Hester v. United States*, *supra*, 265 U.S. at p. 59: "[The] special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." In short, because an open field is not an area protected by the Fourth Amendment, an officer's physical intrusion into such an area is "of no Fourth Amendment significance." (*United States v. Jones* (2012) 565 U.S. 400, 411; accord, *Littlefield v. County of Humboldt* (2013) 218 Cal.App.4th 243, 253.)

In *Oliver v. United States*, *supra*, 466 U.S. 170 (*Oliver*), the Supreme Court reaffirmed the continuing validity of the open field doctrine first announced in *Hester*. In *Oliver*, officers entered the defendant's land without a warrant or probable cause, going around no trespassing signs and a locked gate to find an illegal marijuana crop growing in a highly secluded and remote area. Despite the facts that the area was concealed from public view, surrounded by woods, embankments, and fences, it was nonetheless an open field and consequently the officers did not violate the defendant's Fourth Amendment rights. (*Oliver*, *supra*, 466 U.S. at pp. 173–175, 181–184.) The reason is that "an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." (*Id.* at p. 178.) In contrast to a person's home, "open fields do not provide the setting for those intimate activities

that the Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields.” (*Id.* at p. 179.) Based on the text and purposes of the Fourth Amendment and on the court’s analysis of reasonable expectations of privacy, *Oliver* held that the government’s intrusion into open fields does not constitute a violation of the Fourth Amendment’s proscription against unreasonable searches and seizures. (*Oliver, supra*, 466 U.S. at pp. 177, 184.)

Here, in the second amended complaint, plaintiff alleged the county defendants violated his Fourth Amendment rights because the county inspectors entered onto his rural land and performed inspections without obtaining a warrant. Plaintiff further alleged the land in question consists of a 17-acre parcel in a remote mountainous region, and includes a house, a cottage, a garage, and a barn. However, as the trial court emphasized, although plaintiff claimed that the county inspectors entered his land to perform inspections and to take photographs, there is no allegation in the second amended complaint that the county inspectors ever entered the house, the other structures, or any other portion of the property that could conceivably trigger Fourth Amendment protection. On the contrary, as the county defendants correctly point out, the complaint merely reveals that the county inspectors were investigating issues relating to open storage. The clear implication is the investigations were concerned with and focused on outside open areas or fields, where junk or debris had been deposited. However, under the analysis and holding of *Oliver*, as discussed at length above, a government officer’s entry onto open fields of land to investigate without a warrant does not violate the property owner’s Fourth Amendment rights. (*Oliver, supra*, 466 U.S. at pp. 173–175, 181–184.) Because that was precisely what happened in this case, as the allegations of the second amended complaint clearly reflect, we conclude the open fields doctrine applies as a matter of law and precludes plaintiff’s section 1983 claims.

In an attempt to circumvent the clear implications of *Oliver* and the open fields doctrine discussed therein, plaintiff argues on appeal that the county inspectors may have potentially intruded into an area that *is* protected by the Fourth Amendment known as “curtilage.” We reject plaintiff’s argument as entirely unsupported. Preliminarily, however, we shall briefly explain the concept of a home’s curtilage.

“[T]he curtilage is the area to which extends the intimate activity associated with the ‘sanctity of a man’s home and the privacies of life,’ [citation], and therefore has been considered part of the home itself for Fourth Amendment purposes. Thus, courts have extended Fourth Amendment protection to the curtilage; and they have defined the curtilage, as did the common law, by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private.” (*Oliver, supra*, 466 U.S. at p. 180.) A home’s curtilage has been described as an area immediately surrounding and associated with the home itself, intimately linked to the home both physically and psychologically, where privacy expectations are most heightened. (*Florida v. Jardines* (2013) 569 U.S. 1, 6–7.) For most homes, the boundary of such an area is clearly marked and easily identified. (*Oliver, supra*, 466 U.S. at p. 182, fn. 12.) Curtilage questions may be resolved by particular reference to four factors: “the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.” (*United States v. Dunn* (1987) 480 U.S. 294, 301.) Such factors are not applied mechanically, but “are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home’s ‘umbrella’ of Fourth Amendment protection.” (*Ibid.*) Examples of areas the courts have found to be curtilage include a home’s front porch, a side garden, the area just outside the front window, and a carport enclosure at the top of

the driveway immediately adjacent to the home. (*Collins v. Virginia* (2018) 138 S.Ct. 1663, 1671.)

Turning to plaintiff's argument that the county inspectors may have invaded the "curtilage," we reject that argument for several reasons. First, nothing in the second amended complaint even remotely suggests that an area immediately adjacent to and closely associated with the house itself was entered and searched. Rather, the alleged wrongdoing was described broadly as traversing a private road, entering onto and walking around on plaintiff's land—the 17 acres—and taking photographs relating to open storage issues. Thus, plaintiff's pleading raises no curtilage issue. Second, plaintiff's appeal has failed to offer any potential basis for concluding that the county inspectors invaded curtilage. Instead, plaintiff vaguely suggests without the support of case precedent that the private roadways that traverse his land, and perhaps other outlying areas as well, should be deemed curtilage because, he insists, the entire area is very secluded, his activities are largely concealed from view, and there are few (if any) neighbors who ever pass by or have a view of the property.³ Such arguments are clearly without merit because, even if true, they cannot convert an open field into protected curtilage. (See *Oliver, supra*, 466 U.S. at pp. 182–183 [ad hoc factors such as seclusion, no trespassing signs, or concealment of private activity do not bring an open field into the protection of the Fourth Amendment].) Despite circumstances such as those asserted by plaintiff, "no expectation of privacy legitimately attaches to open fields." (*Oliver*, at p. 180.) Furthermore, plaintiff's arguments altogether miss the mark because there has been no effort to show—nor can plaintiff reasonably do so—that such roadways and outlying areas were immediately adjacent to and intimately associated with the home

³ Plaintiff states the property is *so* private that, when he has visited to work on clearing the land, he sometimes chooses to work outside wearing only his boots and socks.

such that they should be treated as an extension of the home itself. (*United States v. Dunn, supra*, 480 U.S. at p. 301.)

Third, and finally, we reject plaintiff's curtilage argument because he does not reside at the house situated at the Mariposa County property. Rather, he admittedly lives and works in the Oakland area. Since plaintiff is an absentee landowner and does not actually dwell or live at the property, he has no standing to complain that curtilage has been intruded upon or his privacy invaded.⁴ Curtilage is applicable to a "dwelling house" (*United States v. Dunn, supra*, 480 U.S. at p. 300), and an essential requirement for an area to be considered curtilage is that it harbors "the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" (*Oliver, supra*, 466 U.S. at p. 180.) Thus, if a person does not reside or dwell at the house or property in question, he has no standing to claim that curtilage was invaded without a warrant. (*Schneider v. County of San Diego* (9th Cir. 1994) 28 F.3d 89, 92 [so holding].) For all these reasons, plaintiff's curtilage arguments are without merit, and the open fields doctrine is fully applicable.

Based on the foregoing discussion, we conclude the trial court correctly sustained the demurrer to the section 1983 claims set forth in the first and second causes of action because, based on the open fields doctrine, there was clearly no violation of plaintiff's constitutional right under the Fourth Amendment to be free from unreasonable searches or seizures. In view of this conclusion, we find it unnecessary to consider the county defendants' additional argument that qualified immunity under federal law applied to these claims.

B. No Cause of Action under Sections 241 and 242 of Title 18 of the United States Code

In plaintiff's sixth cause of action, he alleges that the county defendants are liable based on purported violations of sections 241 and 242 of title 18 of the United States

⁴ Plaintiff does not claim to have been at the premises at the time any of the inspections occurred.

Code. However, those sections provide for criminal prosecution only and do not create an individual cause of action for civil liability. (*Allen v. Gold Country Casino* (9th Cir. 2006) 464 F.3d 1044, 1048; *Aldabe v. Aldabe* (9th Cir. 1980) 616 F.2d 1089, 1092.) Accordingly, the demurrer to the sixth cause of action was properly sustained.

C. No Cause of Action Against the County Defendants for Declaratory Relief

Plaintiff's 11th cause of action is not directed against any particular defendants. In this cause of action, plaintiff appears to be challenging the validity of Government Code section 65105 on the ground that it allegedly conflicts with the Fourth Amendment of the United States Constitution. However, the proper party in a challenge to the constitutionality of a California statute is the State of California or its officers (*Serrano v. Priest* (1976) 18 Cal.3d 728, 752), and therefore the county defendants cannot be held liable for the terms or provisions of this statute. As such, to the extent the 11th cause of action states any claim for relief, it is not against the county defendants. (See Code Civ. Proc., § 430.10, subd. (d) [defect or misjoinder of party as separate ground for demurrer].) Therefore, the trial court correctly sustained the demurrer by the county defendants to the 11th cause of action.

We conclude the general demurrer was correctly sustained as to each of the federal law causes of action. Moreover, plaintiff has failed to show any feasible grounds for amendment, and it appears that no reasonable basis for amendment exists which could cure the defects discussed above relating to the county defendants. Therefore, leave to amend was properly denied regarding the federal law causes of action.

III. Plaintiff Has Abandoned the State Law Claims

The remainder of the second amended complaint involved state law causes of action premised upon the same underlying facts. The state law causes of action were characterized in the second amended complaint as follows: (1) third cause of action for "California Tort Claims Act"; (2) fourth cause of action for violation of Civil Code section 3480 [public nuisance statute]; (3) fifth cause of action for "Invasion of Privacy"

under Civil Code section 1708.8 [a provision permitting liability for trespassing to capture visual image or recording of person engaging in private, personal or familial activity]; (4) seventh cause of action for “Civil Conspiracy”; (5) eighth cause of action for “Oppression”; (6) ninth cause of action for “Malice”; and (7) 10th cause of action for intentional infliction of emotional distress.

In their general demurrer in the trial court, the county defendants argued that plaintiff failed to state any cause of action under state law because statutory immunity was clearly applicable under provisions of the Government Code. Other distinct grounds for general demurrer were also raised to each cause of action, including that Civil Code section 1708.8 was patently inapplicable, there was clearly no outrageous conduct for purposes of the intentional infliction of emotional distress, conspiracy is not a cause of action, and there was no legal or factual basis for punitive damages. The trial court sustained the general demurrer, without leave to amend.

A. Plaintiff’s Failure to Argue Error on State Law Claims Resulted in Forfeiture

In his opening brief on appeal, *plaintiff addresses only the federal law section 1983 claims*; i.e., he makes no legal argument that any error may have occurred relating to the dismissal of the state law causes of action. The issue of whether the trial court correctly sustained the demurrer to the state law causes of action was simply not raised or discussed by plaintiff. For purposes of this appeal, plaintiff’s failure to present argument on the state law causes of action has significant consequences. The judgment or order of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Therefore, an appellant is required to affirmatively show error, which must be demonstrated by meaningful legal analysis supported by citations to authority and to the record. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457.) Although our review of an order sustaining demurrer is de novo, that review “ ‘is limited to issues which have been adequately raised and supported in [appellants’ opening] brief.’ ” (*WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 155,

brackets in original.) Issues not raised by adequate legal argument in an appellant's brief are deemed forfeited, waived or abandoned. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 836.) Accordingly, where a plaintiff appeals from an order sustaining demurrer to a complaint but fails to argue, in his appellant's brief, that any error occurred with respect to the court's ruling on certain of the causes of action, we treat those causes of action as abandoned. (*McGettigan v. Bay Area Rapid Transit Dist.* (1997) 57 Cal.App.4th 1011, 1016 & fn. 4; accord, *Multani v. Witkin & Neal, supra*, 215 Cal.App.4th 1428, 1457–1458.) That is precisely the situation before us, where plaintiff did not challenge the trial court's ruling on the state law causes of action. Because plaintiff failed in his appellant's opening brief to address the state law causes of action or to argue any error was made by the trial court in sustaining the demurrer thereto, he has forfeited any contentions of error and effectively abandoned said state law causes of action.⁵ As a consequence, the order sustaining demurrer to the state law causes of action should be and is affirmed.

B. The Demurrer Was Properly Sustained

In light of the above conclusions, it is unnecessary to discuss the merits of the order sustaining demurrer to the state law causes of action. However, even assuming hypothetically that plaintiff had not abandoned the state law causes of action and/or forfeited any claims of error regarding the same, we would still conclude the ruling of the trial court was correct because, among other reasons, the county defendants were clearly

⁵ Plaintiff makes a few conclusory remarks in his appellant's reply brief relating to state law claims. However, we disregard an appellant's arguments made for the first time in the reply brief. (*Cohen v. Kabbalah Centre Internat., Inc.* (2019) 35 Cal.App.5th 13, 22; *Scott v. CIBA Vision Corp.* (1995) 38 Cal.App.4th 307, 322.) Furthermore, when, as was the case here, points are raised in a perfunctory manner, without adequate analysis, we may pass over them and treat them as forfeited. (*Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482; *People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4.)

immune from liability by statute. We select the ground of statutory immunity because it relates to all the state law causes of action, and thus provides an expeditious means to show the demurrer was correctly sustained. As more fully explained below, the county employees sued by plaintiff were immune from suit under the provisions of Government Code sections 821.6, 821.8 and 820.2, and accordingly the county itself was also immune from suit. (Gov. Code, § 815.2, subd. (b).)

Government Code section 821.6 provides: “A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.” The statute has been given an expansive interpretation to further the rationale for the immunity, which is to protect public employees in the performance of their prosecutorial duties from the threat of harassment through civil suits. (*All Angels Preschool/Daycare v. County of Merced* (2011) 197 Cal.App.4th 394, 407 (*All Angels*).) “The policy behind section 821.6 is to encourage fearless performance of official duties. [Citations.] State officers and employees are encouraged to investigate and prosecute matters within their purview without fear of reprisal from the person or entity harmed thereby. Protection is provided even when official action is taken maliciously and without probable cause.” (*Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1424.) Although this section refers only to public employees, Government Code section 815.2 extends the protection of the immunity to the employing public entity. (*Kayfetz v. State of California* (1984) 156 Cal.App.3d 491, 496.)

As noted, the immunity extends to investigations conducted by public employees of potential violations. “Acts by a public employee that are ... in the course of an investigation of alleged wrongdoing, are covered by the statutory immunity.” (*All Angels, supra*, 197 Cal.App.4th at p. 407.) Because investigation is an essential step toward the institution of formal proceedings, it is shielded by the immunity. (*Id.* at p. 408.) Further, the immunity extends to investigations even if there is a later decision

not to institute administrative proceedings or to initiate a prosecution. (*Richardson-Tunnell v. Schools Ins. Program for Employees (SIPE)* (2007) 157 Cal.App.4th 1056, 1062.)

Here, plaintiff's lawsuit is premised on the county defendants' actions to undertake *investigations* of potential code violations relating to open storage on plaintiff's land, which investigations were conducted by employees of the county (i.e., the county inspectors) in the scope of their employment and included incidental entry onto open areas of plaintiff's land. In light of the broad construction applied to this immunity provision, we conclude that the inspections of plaintiff's open land to investigate potential code violations were shielded by the immunity set forth in Government Code section 821.6. Therefore, statutory immunity under Government Code section 821.6 provided a sufficient basis for the trial court's order sustaining the demurrer to the state law causes of action.

Additionally, statutory immunity also applied under Government Code section 821.8, which provides that "[a] public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law." As the second amended complaint acknowledged, the county inspectors acted pursuant to authorization contained in Government Code section 65105. Government Code section 65105 states that "[i]n the performance of their functions, planning agency personnel may enter upon any land and make examinations and surveys, provided that the entries, examinations, and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession thereof." Accordingly, because entry onto plaintiff's open land was authorized by statute, the county inspectors were immune from

suit under Government Code section 821.8 for an injury arising therefrom. (See *Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 462.)⁶

Finally, to the extent plaintiff's lawsuit also referred to various department directors or officials of Mariposa County who may have had a discretionary role in deciding to initiate or investigate administrative code violations relating to plaintiff's land, we conclude that said county employees are also immune under Government Code section 820.2, which provides that "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Immunity under Government Code section 820.2 applies when plaintiff's injuries arise from a public employee's exercise of discretion with respect to "basic policy decisions." (*Johnson v. State of California* (1968) 69 Cal.2d 782, 793.) Here, any purported injury to plaintiff from these defendants' decisionmaking would have resulted from their basic policy decisions—namely, whether to initiate administrative code enforcement proceedings. (See, e.g., *Ogborn v. City of Lancaster*, *supra*, 101 Cal.App.4th at p. 461 [director of city's Dept. of Community Development held immune under Gov. Code, § 820.2 for role in initiating nuisance abatement proceedings]; *McCarthy v. Frost* (1973) 33 Cal.App.3d 872, 875 [officer's decision whether to initiate investigation was covered by the discretionary immunity].)

Based on the foregoing, we conclude the trial court correctly sustained the demurrer to the state law causes of action on the ground of statutory immunity.

In conclusion, as we have explained above, plaintiff's failure to present argument in his appellant's brief that the trial court erred in sustaining demurrer to the state law causes of action resulted in a forfeiture by plaintiff of any claim of error thereon and an

⁶ Even if, as plaintiff alleges, Government Code section 65105 is unconstitutional, government employees acting in good faith reliance on the "apparent authority" and applicability of the enactment would still be immune. (Gov. Code, § 820.6.)

abandonment by plaintiff of the state law causes of action. We have also shown that the demurrer was properly sustained. No potential basis for amendment has been suggested, and none is apparent.

IV. Trial Judge Not Disqualified

According to plaintiff, the trial judge who heard the demurrer in this case, i.e., Judge Fagalde, should have disqualified or recused himself based on Code of Civil Procedure section 170.6 (section 170.6). Plaintiff is mistaken. Section 170.6 requires that a motion for disqualification be made no later than the commencement of the hearing to which it is directed. (§ 170.6, subd. (a)(2).) Here, however, nothing in the record indicates that plaintiff filed a section 170.6 motion to disqualify Judge Fagalde in the present case. Plaintiff merely refers this court to a section 170.6 motion allegedly filed in an entirely different case, where the judge allegedly had an acquaintance with one of the parties' attorneys. Because no motion under section 170.6 was filed in the present case, we conclude plaintiff has waived any challenge of bias in connection with Judge Fagalde hearing and ruling on the demurrer in the trial court. (See *Schoenberg v. Romike Properties* (1967) 251 Cal.App.2d 154, 164.) Therefore, plaintiff has not shown any ground for reversal under section 170.6.

DISPOSITION

The judgment of the trial court in favor of the county defendants is affirmed. The county defendants are awarded costs on appeal.

LEVY, Acting P.J.

WE CONCUR:

POOCHIGIAN, J.

SNAUFFER, J.